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Supreme Court, U.S.
FILED

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No._____

IN THE SUPREME COURT OF THE UNITED STATES of AMERICA

ON PETITON FOR A WRIT OF CERTIORARI FROM THE SEVENTH CIRCUIT COURT OF APPEALS, USAP7 No. 05-1105

Petitioners,

Glenn J. Hopkins, DBA Galaxy Innovative Technology, on behalf of those similarly situated,

VS

Respondents,

The State of Illinois, Secretary of State Jesse White, State Farm Mutual Automobile Insurance Company, unknown businesses engaged in the business of Insurance within and without the State of Illinois, and the estate of Leroy Neff,

For Petitioners:

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QUESTIONS PRESENTED

I.

As to whether or not this Court will resolve a conflict between the 7th Circuit Court of Appeals, the 11th Circuit Court of Appeals, and this U.S. Supreme Court's prior policy that "Due process requires notice with time to respond" that is established in re Gault, 387 U.S. 1, (1967), in light of (1) as to whether or not a denial of due process by a District Court is of itself proper grounds for rule 60 relief; and (2) that a remedy under rule 60 should be available when notice of the Courts judgment creating that denial of due process is delayed in receipt past the 10 days allowed for post trial motions under rule 59; and (3) should this Court in the alternative modify the practice rule to be requiring that the tolling of the ten days begins upon verified receipt so as to actually give the recipient 10 days to respond as a matter of due process of law?

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II.

As to whether or not when a District Court modifies a final judgment due to clear due process grounds that are established by a Petition for relief, the resulting judgment thereafter constitutes a new "final judgment", and thus was the Seventh Judicial Circuit Court of Appeals in error to limit the review of that "final judgment" to just abuse of discretion based on grounds these issues "of having been denied due process" should instead have been raised by direct appeal under Bell v Eastman Kodak Co. 214 F.3d 932,934 (7th Circuit 2000), and was Hopkins denied due process of law in re Powell v Alabama, 287 U.S. 45 (1932) by the Appeals Court refusing to treat this modified judgment as a final judgment?

III.

As to whether or not the Seventh Judicial Circuit Court of Appeals invalidates the intent and purpose of Federal rule 60 as was defined by this U.S. Supreme Court in re California Motor Transport 404 U.S. 512-513, when the Seventh Judicial Circuit Court of Appeals stated Hopkins had not stated proper grounds for relief in this appeal of the district Courts judgment because misrepresentation that created a fraud upon the Court was an issue that could be directly appealed, and thus cannot be raised by a petition under rule 60, based on Bell v Eastman Kodak Co. 214 F.3d 932,934 (7th Circuit 2000). Was the Court in error to overrule this U.S. Supreme Court's Decision in re California Motor Transport?

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There is a conflict between the Circuit Courts of Appeal and with this Court as to what constitutes proper grounds for relief under federal rule 60, raising 1st amendment issues as to whether or not a fraud upon the court and denial of due process by a District Court is proper grounds for relief, and whether or not a District Courts change of its judgment after a Petition for relief raised a denial of due process issue constitutes a new judgment which can be reviewed by normal appellate review.

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(2.) Bank of Nova Scotia v. United States, 487 U.S. 250, 254-255 (1988) page 17.
(3.) Bell v Eastman Kodak Co. 214 F.3d 932,934 (7th Circuit 2000), page 16.
(4.) CANTOR v. DETROIT EDISON CO., 428 U.S. 579 (1976) page 27.
(5.)California Motor Transport. 404 U.S. 512-513, page 17
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(7.) Hartford Fire Insurance v California, 509 U.S. 764 (1993) page 21
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(14.) Santiago v Wood, 904 F2d 673 (11th Circuit 1990) page 16
(15.) SMITH v. ROBBINS 152 F.3d 1062, page 18.
(16.) Sherbert v. Verner, 374 U.S. 398(1963) page 26.
(17.) State Farm Mutual Automobile Insurance Co v Universal Underwriters Group, 285 Ill App. 3d 115, 120-21, 674 N.E. 2d 52, 55-56 (1996) page 28.
(18.) United States v. South-Eastern Underwriters Assn., 322 U.S. 533 (1944), page 29
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(20.) Great A&P Tea Co. v. Cottrell, 424 U.S. 366, 370 - 371 (1976) page 29

Statutes in question:

Sherman Anti-Trust Act, 15 U.S.C. § 1.

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony." 26 Stat. 209, as amended, 15 U.S.C. 1.

15 U.S.C. § 2. *Monopolizing trade a felony; penalty* Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

15 U.S.C. § 26. *Injunctive relief for private parties; exception; costs*: Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: Provided, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit for injunctive relief against any common carrier subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49. In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

The McCarran Ferguson Act 15 U.S.C. § 1011. *Declaration of policy*

Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

The McCarran Ferguson Act 15 U.S.C. § 1012 Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948

(a) State regulation; The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) Federal regulation; No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: Provided, That after June 30, 1948, the Act of July 2, 1890, as amended, known as

the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended (15 U.S.C. 41 et seq.), shall be applicable to the business of insurance to the extent that such business is not regulated by State Law.

The McCarran Ferguson Act 15 U.S.C. § 1013. Suspension until June 30, 1948, of application of certain Federal laws; Sherman Act applicable to agreements to, or acts of, boycott, coercion, or intimidation;

(a) Until June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act (15 U.S.C. 41 et seq.), and the Act of June 19, 1936, known as the Robinson-Patman Anti-Discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof. (b) Nothing contained in this chapter shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

The Rico Act, 18-USC-§ 1962:

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

15-USC-§ 3905 Clarification concerning permissible State authority; (a) No exemption from State motor vehicle no-fault and motor vehicle financial responsibility laws Nothing in this chapter shall be construed to exempt a risk retention group or purchasing group authorized under this chapter from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law. (b) Applicability of exemptions; The exemptions provided under this chapter shall apply only to the provision of liability insurance by a risk retention group or the purchase of liability insurance by a purchasing group, and nothing in this chapter shall be construed to permit the provision or purchase of any other line of insurance by any such group. (c) Prohibited insurance policy coverage: The terms of any insurance policy provided by a risk retention group

or purchased by a purchasing group shall not provide or be construed to provide insurance

policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

(d) State authority to specify acceptable means of demonstrating financial responsibility: Subject to the provisions of section 3902(a)(4) of this title relating to discrimination, nothing in this chapter shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specified activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether coverage is obtained directly from an insurance company or through a broker, agent, purchasing group, or any other person.

215 ILCS 5 421. Declaration of purpose.

The purpose of this article is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), by defining, or providing for the determination of, all such practices in this State which constitute unfair